

MT LEGISLATIVE HISTORY

Chapter 194 1985

Bill (H) 790 S _____

Original bill & hist. ____C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) Feb 20 ☒ C

Hearing Date(s) Mar 13 ☒ C

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Date Out Feb 20 ☒ C

Mar 13 ☒ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____

Report _____

Department of Institutions. Senator Mazurek stated they are hired by the district judge. Senator Pinsoneault asked if there were someone else, because the district judges are pretty busy. Senator Towe asked if they intended this bill to be operative for calendar year 1985. Mr. Jenkins replied this bill will go into effect on its passage, but it will go into effect on the county commissioners' level for calendar year 1986.

CLOSING STATEMENT: Representative Jenkins said this bill, if passed, will allow the outlying counties a little better work load of the probation officer, who will be a little more responsible and will have to go into those counties more often to get his case load into proportion with his counties. Under our current system, if he only comes once a month, he is paid the same.

Hearing on HB 801 was closed.

CONSIDERATION OF HB 340: Representative Jack Ramirez, sponsor of HB 340, testified this is an act to generally revise the law regarding disposition of abandoned property in a landlord situation. Some of these things appear to be amendments, but they are just rearranging the current law. In this bill we will now have a specific period of time for the landlord to determine when the property has been abandoned. The landlord must now inventory and store the goods. This bill clarifies the law and the definition of reasonable storage costs. Page 4, lines 15-16, gives you an alternative to do it under the UCC provisions or a sheriff's sale. You can apply the proceeds to any delinquent rent. It is being done right now, but this clarifies it.

PROPOSERS: Jim Kennedy, Representative of the Montana Landlords Association, presented written testimony to the committee (Exhibit 2).

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: Senator Pinsoneault asked Representative Ramirez if he saw any problem on the top of page 4 as to whether there would be any problem with the tenant's paying for the storage costs if the tenant removes the property. Representative Ramirez replied that was an oversight.

CLOSING STATEMENT: None.

Hearing on HB 340 was closed.

CONSIDERATION OF HB 790: Representative Jack Ramirez, sponsor of the bill, stated this bill was designed to clarify some decisions by the

Montana Supreme Court. The bank cannot get prejudgment attachment against a guarantor in a guaranty contract situation because it is a conditional contract. The banks have gone to surety contracts. The guarantors are on that debt just as if they are a principal debtor. The bank can now protect itself. But the debtor prefers the other situation so the bank has to go against the principal obligor first before going to the guarantor. This would allow us to go back to the arrangement which the guarantor thinks he is getting when he guarantees a loan.

PROPOSERS: None.

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: Senator Towe commented the case to which Representative Ramirez referred was his case, and he lost it.

CLOSING STATEMENT: None.

Hearing on HB 790 was closed.

CONSIDERATION OF HB 808: Representative Jack Ramirez, sponsor of the bill, testified this is a bill to clarify the law in the situation where we really do not have any law on contracts for deed and how they can be enforced. Contracts themselves contain provisions as to how they can be enforced. The court has not always treated those in accordance with the language. This copies from the Arizona law the provisions for how to foreclose or forfeit a contract for deed. This doesn't apply to a contract whose primary purpose is to secure the lending of money. If you want to accelerate the full balance due on a contract for deed, then you can only foreclose that as a mortgage, but if you don't accelerate future payments but you forfeit any payments as rent, then this provides for that to be enforced according to the terms of the bill. The length of notice varies with the amount that has been paid on the purchase price. This does not apply to large contracts in excess of \$500,000 where they can fix their own terms. If a seller wants to forfeit, if he has not been paid, he must record a notice of election to forfeit. He must serve by certified mail a notice on the purchaser, on anyone with a security interest or lien or encumbrance, or anyone with a record notice at the courthouse. Within these periods of time, the purchaser can reinstate. If he doesn't do that, then the seller can record an affidavit that he has completed the forfeiture. If you accelerate the balance and want to be paid in full, then you can only foreclose as a mortgage.

PROPOSERS: Bill Spilker, a licensed real estate broker in Helena, appeared on his own behalf and testified he believes he is in favor of this bill but has some questions. He thinks there is a need to clarify

time is of the essence provision and it applies to every payment. Senator Towe commented he feels you are going to raise more questions with this proposal than exist at the present time, especially for those persons with existing contracts who will try to foreclose on a contract and find out they haven't done so and then in 20 years will run into problems. Representative Ramirez responded it has worked well in Arizona. If you have concerns about existing contracts, carve them out and make it apply only to new ones. There is uncertainty in the present law. The courts just don't take them according to their terms. Senator Mazurek asked about foreclosure only as a mortgage rather than a non-judicial foreclosure. Representative Ramirez stated if you want to do this as a trust indenture, he believes that creates some problems. Those are all policy decisions.

CLOSING STATEMENT: Representative Ramirez addressed the issue about partial payment--whether it is accepted by the bank or the seller. If a payment were in escrow, he thinks it is acceptance by the seller and not the escrow agent. Whether 180 days is too long is a policy decision. If a third party brings a contract current, it would not make him a party, as you don't have a contractual relationship with him.

Hearing on HB 808 was closed.

CONSIDERATION OF HB 365: Representative Bud Campbell, sponsor of HB 365, presented written testimony in support of the bill (Exhibit 3).

PROPOSERS: Larry Majerus, Administrator of the Motor Vehicle Division of the Department of Justice, testified the system has already been automated. There are adequate safeguards in addition to monitoring this. The present statute just confuses people when they read it because they think we are on a manual system.

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: None.

CLOSING STATEMENT: None.

Hearing on HB 365 was closed.

ACTION ON HB 365: Senator Pinsoneault moved HB 365 be recommended BE CONCURRED IN. The motion carried unanimously.

ACTION ON HB 790: Senator Towe moved HB 790 be recommended BE CONCURRED IN. The motion carried unanimously.

49th LEGISLATIVE SESSION -- 1985

Date 2/2/85

NAME	PRESENT	ABSENT	EXCUSED
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Bruce D. Crippen	X		
Senator Jack Galt	X		
Senator R. J. "Dick" Pinsoneault	X		
Senator James Shaw	X		
Senator Thomas E. Towe	X		
Senator William P. Yellowtail, Jr.	X		
Vice Chairman Senator M. K. "Kermit" Daniels	X		
Chairman Senator Joe Mazurek	X		

March 13

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MR. PRESIDENT

We, your committee on.....JUDICIARY.....

having had under consideration.....HOUSE BILL.....No. 799

third reading copy (blue)
color

(Senator Towe)

LOAN GUARANTY AS CONTRACT UPON WHICH WRIT OF ATTACHMENT MAY ISSUE

Respectfully report as follows: That.....HOUSE BILL.....No. 799

BE CONCLUDED IN

~~XXXXXX~~
DO PASS

~~XXXXXXXXXX~~
DO NOT PASS

Senator Joe Mizurek

Chairman.

MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 20, 1985

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Tuesday, February 20, 1985 at 7:00 a.m. in Room 312-3 of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Poff who was previously excused.

CONSIDERATION OF HOUSE BILL NO. 790: Rep. Jack Ramirez, District #87, testified in support of HB 790. This bill deals with when a writ of attachment may be issued. It has been held by the Montana Supreme Court that a guaranteed contract is not subject to attachment because the attachment statute requires that an individual can have attachment only when that person has an action upon a contract, express or implied, for the direct payment of money. The Montana Supreme Court has interpreted direct payment of money to exclude guaranteed contracts. (He referred to two Montana Supreme Court cases, Stensvad vs Miners & Merchant's Bank of Roundup, 183M 160, (1979) and Wall vs Brookman 72M228, (1925)). Because of the supreme court decision, if you cannot get an attachment on a contract of guarantee, what has happened is that the banks have gone almost consistently to surety contracts.

There being no further proponents or opponents, Rep. Ramirez closed.

There were no questions from the committee, and hearing closed on HB 790.

CONSIDERATION OF HOUSE BILL NO. 760: Rep. Dennis Nathe, District #19, chief sponsor, testified in support of the bill. He stated that this is a bill which would amend the divorce laws of the state of Montana. The bill does two things: first, it would provide that a decree of marriage dissolution may not be entered until at least 45 days after service on the respondent; second, before the final decree is entered, the issues of child support, custody maintenance and property division must be resolved. He said that if these issues are not resolved, they can go on for five, six and seven years, thus, making it increasingly more difficult to obtain settlements. Rep. Nathe further stated that if the committee feels that the 45-day period is too long, he would not object to that figure being decreased. Rep. Nathe feels that HB 760 may help to salvage a few more marriages in this state. He feels the

Lyle Nagel, representing the State Volunteer Fireman's Association, wished to go on record as supporting this bill.

Dennis Hemmer, representing the Montana Department of State Lands, testified as a proponent. A copy of his written testimony was marked as Exhibit A and attached hereto.

There being no further proponents or opponents, Rep. Spaeth closed.

The floor was opened up for questions from the committee.

Rep. O'Hara wanted to know how much liability could be placed on somebody. Rep. Spaeth responded by saying that a lot of liability could be placed on an individual. Rep. O'Hara stated his reservation about where the line would be drawn. Rep. Spaeth pointed out that if a person did not have any assets, he could not be sued. It was Rep. O'Hara's opinion that passage of this bill would not provide a deterrent. Rep. Spaeth stated that it would only apply to one or two cases per year.

Rep. O'Hara further asked if it wouldn't be difficult to prove that a person started a fire. Rep. Spaeth stated that to prove a person started a fire would certainly be the greatest hurdle to overcome.

An executive session was called at 7:50 a.m.

ACTION ON HOUSE BILL NO. 790: Rep. Gould moved that HB 790 DO PASS. The motion was seconded by Rep. Keyser and carried unanimously.

ACTION ON HOUSE BILL NO. 744: Rep. Brown moved that HB 744 DO PASS. The motion was seconded by Rep. O'Hara and further discussed.

Rep. Mercer spoke in opposition to passing this bill. He said this bill says if a person wasn't negligent, he is liable.

Rep. Keyser feels this is a good bill and long overdue. He feels that the person who started the fire should be liable.

It was Rep. Darko's opinion that even if a person didn't start a fire on purpose but was careless in allowing it to spread, that person should still be held liable for starting the fire.

Rep. Brown feels this bill is reasonable.

Rep. Grady feels this certainly could get out of hand by

February 22 1935

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 799

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LOAN GUARANTY AS CONTRACT UPON WHICH WRIT OF ATTACHMENT MAY ISSUE

Respectfully report as follows: That HOUSE Bill No. 799

DO PASS

VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. 744 (Spaeth); 760 (Nathe)
 767 (Waldron); 779 (Connelly) DATE February 20, 1985
~~790 (Ramirez); 803 (Peck);~~
 SPONSOR 834 (Bergene)

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Greg Nickerson	Helena, Montana (Calvin)	767	
Byle Nager	Simms mt.	744	
Dennis Hemmer	Helena	744	
Jim Hansen	MT Magistrates Assn.	803	
Jerry M. Kirkland	2842 Festival Road	834	
Ferry Corvick	Helena	790	
Don Douglas	Butte	767	
Dennis SHORR	Helena	834	
Kim Kladzky	Airtown General's Office	779	
MOOT McBAIN	BILLINGS	767	
Don H. Morris	MTA Co	767	
Pat Melby	State Bar of Mont.	767	
Pat Melby	State Bar of Mont. for Sup Court	760	
Tom Pouliot	DOR / CSEP	834	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.